

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THOMAS RAY ALLEN,)	
)	
Petitioner,)	Case No. 3:11-cv-190
)	
v.)	JUDGE KIM R. GIBSON
)	
JOSEPH F. MAZURKIEWICZ, JR., et al.)	
)	
Respondents.)	

MEMORANDUM ORDER

This matter is before Magistrate Judge Keith A. Pesto for proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636, and Local Civil Rule 72.

Pro se petitioner Thomas Ray Allen (“Mr. Allen”) is serving a 19–38-year prison sentence imposed by the Court of Common Pleas of Blair County, Pennsylvania, on August 17, 2007. (ECF No. 2 at 2). On August 26, 2011, Mr. Allen petitioned the Court for a writ of habeas corpus under 28 U.S.C. § 2254, asserting that the sentencing court lacked jurisdiction to impose this sentence. (ECF No. 1).

On February 20, 2014, Magistrate Judge Pesto issued a Report & Recommendation (“R&R”) recommending that the Court deny this petition and decline to issue a certificate of appealability. (ECF No. 21).¹ On March 7, 2014, Petitioner filed written objections to the R&R at ECF No. 21. (ECF No. 22). On March 10, 2014, the Court adopted this R&R in full. (ECF No. 23).

¹ Action on Mr. Allen’s habeas corpus petition at ECF No. 1 was delayed by nearly three years due to the concurrent procession through Court of Common Pleas of Blair County of a Post-Conviction Relief Act (“PCRA”) petition filed by Mr. Allen on March 23, 2010. (ECF No. 9-27). A hearing on this motion was held on December 16, 2010, (ECF No. 9 at 3), and the Court of Common Pleas dismissed Mr. Allen’s PCRA petition on January 13, 2011. (*Id.*). However, on December 30, 2011, the Court of Common Pleas reinstated

On June 10, 2021, Mr. Allen initiated a separate matter with a “Complaint for Violations for Civil Rights,” seeking to vacate his 2007 sentence on the same grounds that he offered in his 2011 habeas corpus petition. (Case No. 3:21-CV-103; ECF No. 1). Magistrate Judge Pesto construed this complaint as a second habeas corpus petition in the present matter and promptly transferred it to the United States Court of Appeals for the Third Circuit. (Case No. 3:21-CV-103; ECF No. 2). On September 8, 2021, the Third Circuit dismissed this second habeas corpus petition for failure to prosecute. (ECF No. 29 at 1) (citing *In re. Thomas Allen*, No. 21-2146 (3d Cir. Sept. 8, 2021)).

On December 9, 2022, Mr. Allen filed a “Rule 60” motion seeking the same relief as the 2011 and 2021 petitions. (ECF No. 28). On December 12, 2022, Magistrate Judge Pesto issued a R&R recommending that the Court dismiss Mr. Allen’s filing at ECF No. 28 because Mr. Allen still lacked authorization from the Third Circuit to file a successive habeas corpus petition. (ECF No. 29). The Magistrate Judge also recommended that the Court again decline to issue a certificate of appealability. (*Id.* at 22). Lastly, Magistrate Judge Pesto notified Mr. Allen that, pursuant to 28 U.S.C. § 636(b)(1), he would have fourteen days to file written objections. (*Id.* at 23). Because Mr. Allen was a non-registered ECF user, he had until December 29, 2022, to file

Mr. Allen’s right to appeal from its dismissal of his PCRA petition. (ECF No. 6-2). Meanwhile, on January 9, 2012, the respondents moved for an extension of time to respond to Mr. Allen’s habeas corpus petition at ECF No. 1. (ECF No. 6). Magistrate Judge Pesto granted this motion on January 10, 2012, allowing the respondents to file a response by February 8, 2012. (ECF No. 8). On June 11, 2012, Mr. Allen’s PCRA petition was appealed to the Pennsylvania Superior Court. (ECF No. 10). On May 9, 2013, Magistrate Judge Pesto directed the respondents to supplement the record with this PCRA petition, as well as with the transcript of Mr. Allen’s 2010 PCRA hearing. (ECF No. 16). On May 29, 2013, the respondents moved for an extension of time to furnish the PCRA hearing transcript, which the Magistrate Judge granted on May 30, 2013. (ECF Nos. 16, 17). Then, as noted, the Magistrate Judge issued an R&R on Mr. Allen’s habeas corpus petition on February 20, 2014. (ECF No. 21).

objections. (*See generally id.*). Neither party filed written objections, timely or otherwise. Therefore, the Court need give only “reasoned consideration” to the R&R by “afford[ing] some level of review to dispositive legal issues raised by the report[.]” *EEOC v. City of Long Branch*, 866 F.3d 93, 99–100 (3d Cir. 2017).

Upon reasoned consideration of the record and Magistrate Judge Pesto’s R&R at ECF No. 29, the following order is entered.

AND NOW, this 11th day of May, 2023, it is **HEREBY ORDERED** that Magistrate Judge Pesto’s R&R at ECF No. 29 is adopted as the Opinion of the Court for its reasoning and conclusion.

IT IS FURTHER ORDERED that Mr. Allen’s filing at ECF No. 28 is **DENIED WITHOUT PREJUDICE**.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kim R. Gibson", written over a horizontal line.

KIM R. GIBSON
UNITED STATES DISTRICT JUDGE